In the High Court of Uttaranchal, at Nainital.

(1) First Appeal No. 623/2001
(Old No. 148/1980)

Ram Mohan ……Appellant.
Vs.
Collector, Nainital and others …Respondents.

(2) First Appeal No. 624/2001
(Old No.239/1980)
Mahendra Kumar Mehrotra ..…Appellant.
Vs.
Collector, Nainital and others ….Respondents.

(3) First Appeal No. 625/2001
(Old No.246/1980)

Girish Chandra ..… …..…..Appellant.
Vs.
Collector, Nainital and others ….Respondents.

(4) First Appeal No. 626/2001
(Old No.247/1980)

Satendra Saran … …..…..Appellant.
Vs.
Collector, Nainital and others ….Respondents.

Date: 11-8-2004.

Coram: Hon'ble Mr. Justice P.C. Verma, J.
Hon'ble Mr. Justice B.S. Verma, J.

(Per: Hon'ble Mr. Justice B.S. Verma, J.)

These four appeal have been filed by the claimants-appellants against the judgment and order dated 1-9-1979, passed by the then III Additional District Judge, Nainital.

2- Brief facts giving rise to these appeals are that Bhumidhari land of the claimants was acquired for Land Development and Grahsthan Yojana, Kashipur, vide notification dated 11.1.1975 and Special Land Acquisition Officer, U.P. Avas Evam Vikas Parishad, Lucknow had given his award on 28-12-1977. Against the aforesaid award of Special Land Acquisition Officer reference Nos. 74, 75, 76 and 77 of 1978 made under Section 18 of the Land Acquisition Act were filed before the III Additional District Judge, Nainital. The III Additional District Judge dismissed the

references with cost and the award was accepted and confirmed, per judgment and order dated 7-9-1979.

3- In appeals the claimants/appellants have claimed compensation at the rate of Rs. 75/- per sq. yard, whereas the Land Acquisition Officer in his respective awards had awarded a very meager amount of compensation. It was also alleged that the Land Acquisition Officer has not awarded solatium to the claimants. The rate of interest was also calculated @ 6% per annum, which was not in accordance with law.

4- The Allahabad High Court allowed these appeals per judgment and order dated 30-9-1993 and set aside the judgment and decree of the court below and the respondents were directed to make the payment of balance compensation to the appellants within a period of three months at the rate of Rs. 19.10 per sq. yard along with 9% per annum interest from the date of taking over possession of the land to the date of final payment of the balance amount after adjusting the amount already paid. Cost of appeal @ Rs. 500/- each was also awarded. The amount of 15% solatium was also awarded on the enhanced compensation in each appeal payable within the period of aforesaid three months.

4- U.P. Avas Evam Vikas Parishad filed appeals before the Apex Court against the aforesaid order of the High Court. The Apex Court per order dated 9-2-1996 passed in civil appeal No. 3600 of 1996 and 3603 of 1996, set aside the judgment and order of the Allahabad High Court passed in these appeals Nos. 148 of 1980, 246 of 1980, 247 of 1980 and 239 of 1980 on the ground that U.P. Avas Evam Vikas Parishad was not a party to the proceedings, in view of the decision of the Apex Court in U.P. Avas Evam Vikas Parishad V s. Gyan Devi, 1995(2) S.C.C. 26. In the said order the matter was remanded to the High Court after restoring the respective first appeal, impleading the U.P. Avas Evam Vikas Parishad as respondent therein for disposal of the appeals in accordance with law.

5- These appeals came up for hearing before the Allahabad High Court and the Hon’ble Single Judge passed an order on 14-3-2000. The learned Single Judge observed that the purpose of remanding the case by the Apex Court was aimed at the observation of the procedure

perfected in Gyan Devi (Supra), which can best be obtained either before the Collector or before the reference court. In view of lapse of time involved it would be desirable that this matter may be remanded and it is hereby remitted to the reference court under Order 41 Rule 25 of the Code, now having jurisdiction which is said to be at Udham Singh Nagar, by Mr. R.B. Bhalla, as the case may be, for the limited purpose of determining the compensation afresh on the basis of the evidence that might be placed before it by the U.P. Avas Evam Vikas Parishad in the process of determination of compensation without having been influenced by any observation made in the judgment and decree dated 30-9-1993 which has since been set aside by the Apex Court. The decision of reference court to the extent of determination of compensation is reserved for the limited purpose of remanding the matter for fresh determination of the question on the issue viz. whether the compensation awarded to the claimants in respect of the acquired land is unfair and inadequate?. If so what is the fair amount of compensation? And then sent its decision on such determination in the light of the direction given hereby to this Court in the pending appeals for a decision afresh on the appeals itself under Order 41 Rule 25 of the Code, whereafter provisions of Order 41 Rule 26 will follow.

6- It was also observed by the Apex Court that however, the reference court shall determine the question in accordance with law without being influenced by any observation made either in the order dated 30-9-1993 or in this order or that of the Apex Court as the case may be. Such decision is to be arrived at within a period of four months from the date a certified copy of the order is produced by U.P. Avas Evam Vikas Parishad if necessary by taking up the matter on day to day basis. The appeals, were directed to remain pending before the High Court and the matter be remitted to the reference court for limited purpose as observed above.

7- On receipt of the records before the reference Court, these references Nos. 74, 75, 76 and 77 of 1978 were re-numbered as Reference Nos. 88, 89, 90 and 91 of 2000 respectively. The respondent U.P. Avas Evam Vikas Parishad has filed the written

statement but has not adduced any documentary as well as oral evidence. The Reference Court summoned the earlier files and decided the references on the basis of the oral and documentary evidence which was already on the file.

8- After creation of new District Udham Singh Nagar, the references camp up for hearing before the Additional District Judge, Kashipur District Udham Singh Nagar. He decided the issue whether the compensation amount awarded to the claimants is inadequate and insufficient and rejected the references on this issue and confirmed the award of Collector/Special Land Acquisition Officer given earlier. The Reference Court submitted the records of the reference along with his decision to the Allahabad High Court.

9- After receipt of these appeals from Allahabad High Court these appeals have been numbered as 623, 624, 625, 626 of 2001.

10- We have heard the learned counsel for the parties and perused the records.

11- The first question which arises for determination is whether the compensation awarded to the claimants-appellants is insufficient and inadequate. From perusal of record it reveals that the acquired land was divided into three belts for the purpose of calculating compensation and for determination of rate. The first belt was 100 yard deep from Bazpur-Rudrapur main road. The second belt was further 100 yards deep to the first belt and the rest land was put in the third belt. For the first belt Rs. 6/- per yard , for the second belt Rs. 4/- and for the rest land Rs. 3/- per sq. yard was awarded. The Court below has held that the land prior to acquisition was agricultural land on 11.1.1975 when the notification under Section 4(1) of the Land Acquisition Act was issued it was not within the municipal limits of Kashipur and this area was included within the municipal area after the notification. In the award 27 sale deeds of village Ujjain were considered. The land of the sale deeds was having different nature. At certain places its level was lower than the acquired land. The rate per sq. foot ranged between Rs. 0.58 paise to rs. 25.35 . The land shown in the said sale deeds were said to be identical with the acquired land. The land shown in the sale deed mentioned at serial No.16 was sold @ 16.38 per sq. yard which was considered unreasonable. The land

of other sale deeds was sold at the rate of Rs. 8/- per sq. yard which was held as correct examplar. The rate was fixed after 25% deduction holding that the acquired land was a big plot and it was divided in different belts. The Court below also held that no cogent and reliable evidence of market rate of the land was adduced. It was argued on behalf of the appellants that vide impugned award land of Ashish Gopal and Anand Gopal was also acquired and the land of the appellants was identical and having same quality as that of Ashish Gopal and Anand Gopal and the Collector has determined the compensation to the land of these land owner @ 19.00 per sq. yard. The land references of Ashish Gopal and Anand Gopal were decided in the year 1983 and the land references of the present claimants-appellants were decided in the year 1978, whereas the entire land was sought to be acquired on 11.1.1975. The publication of the notification was made on 13.3.1976 and the land had become part of the Nagar Palika of Kashipur and the possession of the land from the appellants was taken on 24.4.1976 under Section 17 of the Act. The division of land in to different belts is irrational The entire land of each land owner should have been taken as compact unit and thereafter the land owners should have been awarded compensation at market value.

12- So far as the market value of the land is concerned, the learned lower court has recorded the findings that the land owners has not adduced cogent and reliable evidence in this regard. The potential value of the land should have kept in mind by the Collector and he could very well be aware of the market value of the land. Examplar of twenty seven sale deeds was considered for determination of market value, out of which the rates given in 23 sale deeds was discarded, and the Collector has not cared to consider as to whether the rate given in these 23 sale deeds was liable to be discarded according to law or not. The rate given in other 4 sale deeds was taken as examplar. There was variance in the rate between Rs.8/- per sq. yard and Rs. 16/- per sq. yard. This rate was also not accepted though these four sale deeds were not discarded for the purpose of determination of the rate. Hence the rate fixed by the Collector at Rs. 6/-, Rs.4/- and Rs. 3/- per sq. yard for different belts is therefore not

based on any evidence and is arbitrary ignoring the relevant material on the records. It appears that the Collector has fixed the rates by his imagination. In reference Nos. 79 and 80 of 1978 the Civil Court has allowed Rs. 1910 per sq. yard for the similar land acquired under the impugned award. It was also argued that the State Government has not filed any appeal against those two reference and the order of the Civil Court has become final. Though the decision of the Civil Court is later and the decision in the present cases is earlier but that would be immaterial as the quality and potentionality of the land in the present appeals and that of reference Nos.79 and 80 of 1978 is identical and similar and both the land were covered by the same notification dated 11.1.1975. Therefore the rate of the land covered in reference Nos. 79 and 80 of 1978 is also applicable to the land in dispute.

13- The land in question originally was agricultural land and was acquired for residential purposes of Avas Vikas and the Collector's observation, accepted by the reference court, that the land had always remained agricultural land is not correct. The land was not acquired for the agricultural purpose but was acquired for residential purposes , therefore its value was to be assessed by taking into consideration its potential use. In these matter it has not been done and therefore the land Acquisition Officer and the Reference Court has erred in determining the value of the land.

14- For the reasons aforesaid we are of the view that the compensation awarded to the claimants-appellants is insufficient and inadequate and they are entitled for compensation @ Rs 19.10 per sq. yard and the amount already received by the appellants shall be adjusted in the compensation, which is to be paid to the appellants now at the rate of Rs. 19.10 per sq. yard.

15- The second submission raised on behalf of the appellants is in regard to the value of standing trees on the acquired land. It is submitted that proper compensation of the fruit growing trees standing on the acquired land has not been assessed. The Collector has calculated the value of the trees separately taking into consideration the number of such trees. The trees are said to be fruit growing. The value of the trees has to be seen with reference to the date of

notification under Section 4 of the Act, which has been done, and no further enhancement of value of

16- Lastly the learned counsel for the appellants submitted that the appellants should be paid solatium @ 30% and the interest also @ 12% per annum instead of 6% per annum and the benefit of Section 23-1(a) of the Act may also be given.

17- So far as the award of solatium @ 30% is concerned, it is stated that the Land Acquisition Act was amended in 1984, increasing the solatium to 30% but it was made applicable to the award made by the Collector or the Court between April, 30, 1982 and September 24, 1984 and not before. The benefit of the amended Act could not be granted by the High Court and the Supreme Court in respect of the award made by the Collector or the Court prior to April 30, 1982. The five Judges Bench of Apex Court in **Union India and another Vs. Raghubir Singh etc.; Prithpal Singh and others vs. Union of India; Ram Mehar Rajkumar and others vs. Union of India and others; Delhi Cattle Breeding Farms Pvt. Ltd. etc. vs. Union of India, reported in AIR 1989 Supreme Court 1933,** has approved the decision of two judges Bench of Apex Court, rendered in **K. Kamalajammanniavaru vs. The Special Land Acquisition Officer; AIR 1985 Supreme Court, 576** and overruled the view taken by two judges Bench of the Supreme Court in the matter of **Bhag Singh and others vs. Union Territory of Chandigarh; AIR 1985 Supreme Court 1576.** The Apex Court held that the benefit of the enhanced solatium to be given, is confined to an appeal against an award of the Collector or of the Court rendered between 30 April, 1982 and 24 September, 1984 only. Admittedly in the present matters, the awards of Special Land Acquisition Officer were made on 28-12-1977 and the Reference Court accepted the awards vide its judgment and order dated 7-9-1979, which are prior to the specified dates i.e. between 30th April , 1982, and the benefit of amended provision in the Act by Amending Act No. 68 of 1984, can not be extended in the present cases.

18- The learned counsel for the appellants further contended that the Reference Court decided the references afresh on 3-2-2001. The argument is misconceived. The Reference Court had finally decided

these references on 7-9-1979 and appeals were filed before the High Court in the month of May, 1980 and during the pendency of the appeals, this Court remitted these appeals to the Reference Court under Order 41 Rule 25 C.P.C. to decide an issue after hearing U.P. Avas Evam Vikas Parishad. The Reference Court decided the issue on 3.2.2001 and sent the record to this Court. The Reference Court had already decided the issue on 7-9-1979, but this Court directed the Reference Court to decide the issue of adequate compensation, after hearing U.P. Avas Evam Vikas Nigam. This is an assistance to this Court and the appellants are entitled to get benefit of Section 23(2) of Land Acquisition (Amendment Act) Act, 1984.

19- From the above discussion we are of the considered view that the appellants are entitled to get the solatium @ 15% and not at the increased rate i.e. 30%.

20- Now the question for determination is as to whether the appellants are entitled to get the interest on the compensation amount at the increased rates or not?. The claimants- appellants have been awarded interest @ 6% per annum on the compensation amount. In the unameded Act the rate of interest was provided 6%. Now by the increased to 9%. The Apex Court in the matter of **Ghaziabad Development Authority vs. Anoop Singh and another; (2003) 2 Supreme Court Cases 484** has held that amended Section 28 was to apply to any award by the Collector or Court, or an appellate order of High Court or Supreme Court passed in appeal against such award, made after 30-4-1982 and before the commencement of the Amendment Act. In the present cases, as stated above, the awards were made by the Special Land Acquisition Officer on 28-12-1977 and the Reference Court decided the references on 7-9-1979, and hence the appellants-claimants are not entitled to get the increased rate of interest @9%. We hold that the appellants-claimants are entitled to get interest on the amount of compensation @ 6% per annum.

21- For the reasons aforesaid, these appeal nos. 623/2001 (old No. 148/1980), 624/2001 (old No. 239/1980), 625/2001 (old No. 246/1980), and 626/2001 (old No. 247/1980) are partly allowed. The impugned awards dated 28-12-1977 made by the Special Land

Acquisition Officer, are modified to the extent that the claimants-appellants are entitled to get compensation @ Rs. 19.10 per square yard and they are also entitled for solatium on the enhanced amount of compensation @ 15%. However the impugned awards, in respect to the rate of interest and the amount awarded with regard to the standing trees, are maintained. The respondents are directed to make the payment of enhanced compensation to the appellants within a period of three months. The solatium @ 15% shall also be paid on the enhanced compensation within the aforesaid period of three months.

(B.S.Verma,J.) **(P.C.Verma,J.)**

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